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EXAMINER

SAFAVI, MICHAEL

ART UNIT

PAPER NUMBER

3673

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1.9

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary

Application No.

09/597,351

Applicant(s)

BUNTE, UWE

Examiner

M. Safavi

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 April 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☒ The proposed drawing correction filed on March 26, 2003 is: a) ☐ approved b) ☒ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____ |

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1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on April 22, 2003 has been entered.

Drawings

2. The proposed drawing correction and/or the proposed substitute sheets of drawings, filed on March 26, 2003 have been disapproved. See Advisory action of April 09, 2003.

3. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: reference numeral 15. *A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.*

Applicant is reminded that the proposed drawing corrections of August 13, 2001; February 05, 2002; and March 26, 2003 have not been approved.

4. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "said heat-expansive element...

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retained around said inner contour” must be shown or the feature(s) canceled from the claim(s).

No new matter should be entered.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

6. Claims 5 and 12-14 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The specification does not appear clear and complete as to “said latching device comprising a latching opening and a corresponding latching web”. The specification does not describe any features of the so called “latching opening” or “latching web”. The specification appears to define only the “latching cylinders” and corresponding “mushroom-shaped latching elements” as serving to hold, or latch, the two halves of the “retaining device”. The specification is not, at all, clear as to how either or both of the “latching opening” or the “latching web” serve to hold, or latch, the two halves of the “retaining device”. Nor is the specification clear as to “said free gap is bounded inwardly by said heat-expansible element disposed around said inner contour”. Nor is the specification clear as to “said heat-expansible element has a shape corresponding...to said free gap formed by said latched half-

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shells". Regarding the last two objections, how does the heat-expansible element correspond to the free gap if the free gap is bounded inwardly by the heat-expansible element? Or, how is the free gap bounded inwardly by said heat-expansible element if the heat-expansible element corresponds to the free gap?

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claims 5 and 12-14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 5, line 10, "said first half-shells" lacks an antecedent within the claim. Line 11, "said second half-shells" lacks an antecedent within the claim. Lines 5-6, what particularly is being defined by "said latching opening being disposed within said inner contour of said first half-shell" or "said latching web being disposed in said region of said second half-shell"? The specification does not appear clear as to such limitation(s). It would appear that the "latching device", (3 and 11 of Figs. 1 and 3), is located outside the contour. Otherwise, what, specifically, is being defined by "contour", "inner contour" or "region"? Or, what, specifically, is being defined by "latching device" or "latching opening" or "latching web"?

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Claim 13, what, particularly, is being defined by “said free gap is bounded inwardly by said heat-expansible element disposed around said inner contour”? The specification does not appear clear as to such limitation.

Claim 14, what, particularly, is being defined by “said heat-expansible element has a shape corresponding...to said free gap formed by said latched half- shells”? The specification does not appear clear as to such limitation. It is not clear as to what shape, specifically, the free gap defines.

Further, it is not clear from the language of claims 1-3 and 5-8, and more particularly claims 2, 3, 5, 6, 7, and 8, as to what specifically comprises the claimed “latching device”. Is the claimed “latching device” formed of both the latching cylinder 3 and mushroom-shaped latching element 11? Or, is the claimed “latching device” formed of only one of the latching cylinder 3 and mushroom-shaped latching element 11? Claims 2, 3, 6, and 8 appear to define the “latching device” as formed on or along both the first half-shell and the second half-shell while claim 7 appears to define the “latching device” as formed on or along only one half-shell. And, as presented above, the specification is not clear as to a “latching device” being formed of “a latching opening and a corresponding latching web” as is now recited in claim 5.

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Claim Rejections - 35 USC § 102

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371© of this title before the invention thereof by the applicant for patent.

10. Claims 1, 2, 4, 5, and 7-14 are rejected under 35 U.S.C. 102(b) as being anticipated by Miura et al. Miura et al. shows, Fig. 4, retaining device formed by two half-shells 12/14 and 16/11 "latched to one another" via a "latching device", col. 2, line 38 and col. 3, line 16, with an expansible shaped element 15, (or 5 as shown in Fig. 2B), of a contoured ring-like plate inserted within the retaining device and disposed around an inner contour of the device. The expansible element expanding under the influence of heat, col. 3, lines 12-14.

11. Claims 1-9, and 11-14 are rejected under 35 U.S.C. 102(b) as being anticipated by Hull et al. Hull et al. shows, Fig. 2, retaining device formed by two half-shells 20 and 16 with an expansible shaped element, (seen along either side of latching means 18), of a contoured ring-like plate inserted within the retaining device and disposed around an inner contour of the device. Latching devices 40/48 and 18 are disposed on inner surfaces, ("outer surface" or "outer

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border"?), of the half shells with element 18 possessing a mushroom-shape at 38. Latching cylinder being at 40/48.

Claim Rejections - 35 USC § 103

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. Claims 1-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hull et al. in view of any of Steward et al. or Tusim et al. or Doerer or Wycech.

Each of Steward et al., Tusim et al., Doerer, and Wycech teach utilization of synthetic plastic material which material is or has been expanded under the application of heat, 14 of Steward et al., col. 1, lines 38-46 of Tusim et al., col. 1, line 61 to col. 2, line 8 of Doerer, and 44 of Wycech. To have formed the expansible shaped element of Hull et al. of a synthetic plastic which takes form under application of heat, thus utilizing any one of well known synthetic plastic foam materials as the filler element, would have constituted an obvious expedient to one of ordinary skill in the art at the time the invention was made as taught by any of Steward et al. or Tusim et al. or Doerer or Wycech.

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Response to Arguments

14. Applicant's arguments filed March 26, 2003 have been fully considered but they are not persuasive. Reference is made to Examiner's remarks within the Advisory action of April 09, 2003.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to M. Safavi whose telephone number is (703) 308-2168.



**MICHAEL SAFAVI
PRIMARY EXAMINER
ART UNIT 354**

M. Safavi
June 19, 2003